

<p style="text-align: right;">Page 121</p> <p>1 A His statements and his testimony.</p> <p>2 Q Is your opinion that the door moved away from the</p> <p>3 railing of the vessel six inches?</p> <p>4 A It could have been. I don't know. There is no way,</p> <p>5 there is no way to quantify the exact amount of</p> <p>6 movement. It's impossible.</p> <p>7 Q You would agree with me if one were to -- There are</p> <p>8 two ways the door could move, the first being the</p> <p>9 wire was let out from the main towing wire, wire</p> <p>10 would let out in which case the door would drop?</p> <p>11 A If the wire was let out, the door would drop.</p> <p>12 Q If the wire was pulled in, the door would lift up?</p> <p>13 A That's correct.</p> <p>14 Q That's one way in which the door could move,</p> <p>15 correct?</p> <p>16 A That would be vertical movement.</p> <p>17 Q Correct?</p> <p>18 A Right.</p> <p>19 Q It would appear as vertical movement by anybody</p> <p>20 standing on the boat?</p> <p>21 MR. REGAN: Objection. Go ahead.</p> <p>22 Q If you are standing on the boat, it would appear to</p> <p>23 them it was moving up and down, correct?</p> <p>24 MR. REGAN: Objection.</p>	<p style="text-align: right;">Page 123</p> <p>1 the bottom of Magnetic Hill, it appears as if the</p> <p>2 hill that you are rolling on is going uphill but</p> <p>3 it's actually going downhill, and that is the</p> <p>4 attraction of Magnetic Hill. That's the beauty of</p> <p>5 it. The objects around that hill give the</p> <p>6 appearance that you are going uphill with your car</p> <p>7 in neutral and the brake off and the car is rolling.</p> <p>8 The kids get all excited.</p> <p>9 Q Never been there, so I don't know.</p> <p>10 A It's in New Brunswick, I believe. It's a great</p> <p>11 place to bring your kids.</p> <p>12 [Recess]</p> <p>13 Q Directing your attention to your affidavit which we</p> <p>14 marked in this deposition as exhibit --</p> <p>15 MR. REGAN: Several copies.</p> <p>16 Q -- 7, so we're clear, as I understand it, you</p> <p>17 believe that what caused in connection with</p> <p>18 Mr. Aguiar's injury, what caused the chain to come</p> <p>19 taught was the lateral movement of the door away</p> <p>20 from the rail of the boat, is that correct?</p> <p>21 A It is more likely than not that that is what</p> <p>22 happened.</p> <p>23 Q That if I understand your opinion, what occurred was</p> <p>24 the boat rolled, he was on the port side so it</p>
<p style="text-align: right;">Page 122</p> <p>1 A If you were standing still and you moved it up or</p> <p>2 down, it wouldn't appear as if it was moving up and</p> <p>3 down, it would actually be moving up and down. If</p> <p>4 you operated the winch up, it would move up; if you</p> <p>5 let it down, it would go down.</p> <p>6 Q Correct. You would agree that, and we talked about</p> <p>7 it earlier, that we're all moving around the earth</p> <p>8 and the earth in moving around the sun and all sorts</p> <p>9 of things like that. That movement, relative</p> <p>10 movement, had to do with where you are looking at it</p> <p>11 from, correct?</p> <p>12 A Well, relative movement had to do with one object</p> <p>13 moving relative to other objects on which you are</p> <p>14 standing or on which you are on a moving object</p> <p>15 looking at a fixed object. It's all relative to</p> <p>16 where you are or how you are observing it.</p> <p>17 Q If you haul in the wire, the main wire, if you are</p> <p>18 standing with your feet on that deck, that door is</p> <p>19 going to appear to move upward?</p> <p>20 A No, it's not going to appear to move upward, it is</p> <p>21 actually going to move upward.</p> <p>22 Q Relative to you.</p> <p>23 A Right. When you go to Magnetic Hill in Canada and</p> <p>24 you are standing at the bottom, you have your car at</p>	<p style="text-align: right;">Page 124</p> <p>1 rolled to port, the door swung away from the boat?</p> <p>2 A Correct.</p> <p>3 Q When it swung away from the boat, the safety chain</p> <p>4 became taught?</p> <p>5 A Correct.</p> <p>6 Q When the safety chain became taught, it pulled the</p> <p>7 pelican hook open?</p> <p>8 A Correct, before he had it.</p> <p>9 Q Crushing his finger between the back side of the</p> <p>10 pelican hook and the chain, correct?</p> <p>11 A That I'm not sure of. Based on what he said, the</p> <p>12 pelican hook snapped open and struck him. It could</p> <p>13 have been just a striking. Whether or not it became</p> <p>14 pinched I'm not sure. I know that is the physical</p> <p>15 mechanical portion of the injury. Whether it got</p> <p>16 pinched between that hook and the chain, I'm not</p> <p>17 sure.</p> <p>18 Q Have you ever spoken to him about his accident?</p> <p>19 A Mr. Aguiar, no, I have not.</p> <p>20 Q So what you are relying on is what were the</p> <p>21 materials provided by Mr. Regan?</p> <p>22 A His statement and his deposition.</p> <p>23 Q Have you ever talked to your son about the taking of</p> <p>24 his statement?</p>

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<p style="text-align: right;">Page 125</p> <p>1 A Not that I recall.</p> <p>2 Q Do you know if there is a procedure at Marine Safety</p> <p>3 Consultants with respect to taking the statement</p> <p>4 from an injured crew member?</p> <p>5 A A standard procedure in how to take a statement or</p> <p>6 when to take a statement?</p> <p>7 Q You take a statement every time you have been</p> <p>8 assigned to investigate an injury on a commercial</p> <p>9 fishing vessel, correct?</p> <p>10 A When the witnesses are available and there is time</p> <p>11 and opportunity to take a statement, yes.</p> <p>12 Q With respect to the injured person, you always would</p> <p>13 like to take a statement from the injured person?</p> <p>14 A If they are willing to provide a statement of their</p> <p>15 version of the facts, yes, injured person and</p> <p>16 witnesses.</p> <p>17 Q Isn't it true that normally before you would</p> <p>18 actually, if you are going to take a tape-recorded</p> <p>19 statement, before you take the tape-recorded</p> <p>20 statement, you would interview the injured party to</p> <p>21 find out how the accident occurred and so forth and</p> <p>22 so on?</p> <p>23 A Conduct a brief preliminary interview just to</p> <p>24 establish an understanding of why a statement is</p>	<p style="text-align: right;">Page 127</p> <p>1 drogue. It's less able to be moved in a seaway than</p> <p>2 an object in air.</p> <p>3 Q And it would tend to dampen the amount in which the</p> <p>4 door would move away from the side of the vessel,</p> <p>5 correct?</p> <p>6 A Well, not dampen, it would physically prevent it</p> <p>7 because there is another chain connecting the bag of</p> <p>8 fish to the door.</p> <p>9 Q So if the bag of fish is attached to the door, okay,</p> <p>10 will the door swing away on both sides, will the</p> <p>11 door swing away from the side of the vessel when the</p> <p>12 boat rolls?</p> <p>13 A Yes.</p> <p>14 Q Will the bag tend to dampen the amount by which the</p> <p>15 door will swing away from the side of the vessel</p> <p>16 when the boat rolls?</p> <p>17 A Not enough to allow them to do what they have to do</p> <p>18 with the door to transfer the load from the door to</p> <p>19 the net drum. That's why they put the safety or</p> <p>20 restraining chain on it.</p> <p>21 Q Repeat that?</p> <p>22 A The purpose of the strap in the first place, the</p> <p>23 safety chain, is to prevent the door from moving.</p> <p>24 In order to --</p>
<p style="text-align: right;">Page 126</p> <p>1 going to be taken, find out briefly what happened,</p> <p>2 and then when the person giving the statement was</p> <p>3 prepared, lead into the formal statement, yes.</p> <p>4 MR. REGAN: Objection again to this topic</p> <p>5 as not something he is being proffered as an expert</p> <p>6 witness on. I'll have a standing objection if I can</p> <p>7 on that.</p> <p>8 Q Going to your affidavit which we've marked as</p> <p>9 Exhibit --</p> <p>10 MR. REGAN: 7 is the one that was</p> <p>11 actually filed in court. There are several copies</p> <p>12 out here on the table.</p> <p>13 Q Exhibit 7, paragraph 7 is what we've just been</p> <p>14 talking about, okay? Correct?</p> <p>15 A 7 and 8.</p> <p>16 Q You would agree with me that the bag is not going to</p> <p>17 be able to swing through the water the way the door</p> <p>18 can swing through the air, the bag of fish?</p> <p>19 A No, that's the correct.</p> <p>20 Q That would since the bag is in the center line of</p> <p>21 the vessel, okay, and hanging on the doors, okay,</p> <p>22 then that would tend to retard any movement of the</p> <p>23 door, correct?</p> <p>24 A Well, the bag of fish acts as an anchor, a sea</p>	<p style="text-align: right;">Page 128</p> <p>1 Q Who told you that?</p> <p>2 A Why else would there be a safety chain to prevent</p> <p>3 the door from moving?</p> <p>4 Q Where did you learn that the purpose of the safety</p> <p>5 chain was to keep the door from sliding outboard?</p> <p>6 A It's just common knowledge of why you have a safety</p> <p>7 chain.</p> <p>8 Q What specifically do you base that on, though?</p> <p>9 A Well, common knowledge, and I believe in the</p> <p>10 testimony throughout here, that's Mr. Aguiar and</p> <p>11 Mr. Lima or Lisa Aguiar says that is the purpose of</p> <p>12 the chain.</p> <p>13 Q I'm asking you where do you base the opinion that</p> <p>14 the purpose of the safety chain is to keep the door</p> <p>15 from swinging outboard?</p> <p>16 A From swinging outboard and down, it's a stopper</p> <p>17 chain. If it wasn't a safety chain to prevent</p> <p>18 movement, why would you have it?</p> <p>19 Q To take the load off the main winch?</p> <p>20 A The safety chain doesn't take the load off the main</p> <p>21 winch.</p> <p>22 Q What do you base that on?</p> <p>23 A The main winch, the load is taken off by the brake.</p> <p>24 Q Is it your understanding that the load of the doors</p>

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<p style="text-align: right;">Page 129</p> <p>1 is never placed on the safety chain?</p> <p>2 A No, it is placed on the safety chain once it's set.</p> <p>3 That is the purpose of the safety chain, to restrain</p> <p>4 the door from moving once it's up in the air.</p> <p>5 Q What is your understanding of what they do on the</p> <p>6 MY WAY after they connect the safety chain? What is</p> <p>7 your understanding of the next step in the process?</p> <p>8 A They then transfer the wire that is connected from</p> <p>9 the bag of fish to the door to a hook-up point on</p> <p>10 the net drum that allows them to haul the fish</p> <p>11 aboard on the net drum.</p> <p>12 Q What is your understanding of after the -- Is that</p> <p>13 your understanding of the next action taken after</p> <p>14 the safety chain is connected on the FISHING VESSEL</p> <p>15 MY WAY?</p> <p>16 A That is the basic maneuver of what they are doing.</p> <p>17 They are transferring the fish net from the doors to</p> <p>18 the net drum to wind it up and bring the fish</p> <p>19 aboard. So in order to do that, the door has to be</p> <p>20 restrained, fixed to allow the man to take the chain</p> <p>21 off the door and hook it to the net drum.</p> <p>22 Q Why would you have to secure the door in order to</p> <p>23 take the, to transfer the --</p> <p>24 A How else could you unhook the chain from the door if</p>	<p style="text-align: right;">Page 131</p> <p>1 strain on the main towing wire, and that allows them</p> <p>2 to move the chain from the net drum to the door and</p> <p>3 the door to the net drum. Then when they hook the</p> <p>4 nets back up to the doors, then they set everything</p> <p>5 again after they unwind the net drum and they lower</p> <p>6 the doors and the doors drop down to the bottom with</p> <p>7 the nets and he starts towing again. So it's not</p> <p>8 hooked up to the net drum at that point. So they</p> <p>9 have to transfer the load from the trawl door to the</p> <p>10 net drum, from the net drum to the trawl door to</p> <p>11 reverse the process.</p> <p>12 Q You agree with me that they use the safety chain,</p> <p>13 they actually, after you hook up the safety, you</p> <p>14 actually lighten, you actually let the main winch</p> <p>15 out such that the load of the door is now taken up</p> <p>16 by the safety chain?</p> <p>17 A Partially, I believe. Again I haven't discussed</p> <p>18 that part of the evolution with them because it</p> <p>19 wasn't what they were doing at the time of this</p> <p>20 incident. They were not setting out, they were</p> <p>21 hauling back.</p> <p>22 Q When you are hauling back, is it your opinion that,</p> <p>23 what do they do with the doors after you set the</p> <p>24 safety chain?</p>
<p style="text-align: right;">Page 130</p> <p>1 it was swinging freely in space and not secure it to</p> <p>2 the side of the boat where you could reach it and it</p> <p>3 was swinging away? It would be more hazardous if it</p> <p>4 was allowed to swing back and forth and they were</p> <p>5 trying to move the net connection point from the</p> <p>6 door, the two doors that are pulling the net to the</p> <p>7 net drum.</p> <p>8 Q So it's your testimony, so we're clear about this,</p> <p>9 after the door, and talking about the FISHING VESSEL</p> <p>10 MY WAY, it's your understanding that after they</p> <p>11 pull, haul in the two main wires on either port and</p> <p>12 starboard and they haul it to the point where the</p> <p>13 doors are hanging adjacent to the gallus frame, is</p> <p>14 it your understanding at that point they lock the</p> <p>15 brake and they lock down the, tighten the brake on</p> <p>16 both winches, put the winch in neutral, okay, and</p> <p>17 they never touch the two main winches again until</p> <p>18 they are ready to set out? Is that your</p> <p>19 understanding?</p> <p>20 A No.</p> <p>21 Q When do they next touch the two main winches?</p> <p>22 A Some point they reduce the strain on the wire so</p> <p>23 that the doors are hanging alongside the boat on the</p> <p>24 wire and on the safety chain and they have less</p>	<p style="text-align: right;">Page 132</p> <p>1 A They reduce the strain on the wire.</p> <p>2 Q By letting out the main winch?</p> <p>3 A A little bit.</p> <p>4 Q Such that now the load of the door is hanging on the</p> <p>5 safety chain?</p> <p>6 A But still connected to the main wire. It's not</p> <p>7 disconnected from the main wire.</p> <p>8 Q The shackle has not popped out?</p> <p>9 A Right.</p> <p>10 Q But the load is being held --</p> <p>11 A You don't want the door to drop off into the sea and</p> <p>12 lose it, so it's still connected to the main wire</p> <p>13 and the safety wire.</p> <p>14 Q Directing your attention to your affidavit,</p> <p>15 paragraph 7 is what we've been talking about over</p> <p>16 the last hour or so, correct?</p> <p>17 A Um-hum.</p> <p>18 Q Paragraph 8, same sort of paragraph 8. Just before</p> <p>19 we move on, the amount of which the door moves away,</p> <p>20 moves relative to this safety chain, okay, because</p> <p>21 that's what we are talking about, we're talking</p> <p>22 about relative movement of the safety chain as</p> <p>23 compared to the door.</p> <p>24 A Safety chain was already around the chain on the</p>

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